

## Message Text

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ACTION NEA-10

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TAGS: PINT, SHUM, CE  
SUBJECT: SUPREME COURT RULES EMERGENCY VALID AFTER ALL

REF: (A) COLOMBO 4533, (B) COLOMBO 3444

1. SUMMARY: AS REPORTED REF A, A FIVE-MAN SUPREME COURT  
PANEL DECEMBER 10 OVERRULED AN EARLIER JUDGMENT OF A HIGH  
COURT-AT-VAR (REF B) AND DECLARED THT THE EXISTING STATE  
OF EMERGENCY IS VALID. THIS CABLE DISCUSSES THE COURT'S  
REASONING AND EXAMINES SOME SPECULATION ARISING FROM THE  
DICISION AND THE ACCOMPANYING SURPRISE MOVE OF THE ATTORNEY-  
GENERAL IN DROPPING THE ORIGINAL CASE. END SUMMARY

2. A FIVE-MAN SUPREME COURT PANEL DECEMBER 10 UNANIMOUSLY OVERRULED  
A HIGH COURT JUDGMENT THAT THE STATE OF EMERGENCY, WHICH  
MUST BE RENEWED MONTHLY, HAD BEEN IMPROPERLY REDECLARED  
AFTER THE INTRODUCTION OF THE PUBLICAN CONSTITUTION IN  
1972. THE HIGH COURT DECISION HAD COME IN A CASE  
INVOLVING FOUR TAMIL DISSIDENTS ACCUSED, UNDER EMERGENCY  
REGULATIONS, OF DISTRIBUTING SECESSIONIST LITERATURE.  
THEREFORE THE CASE WAS FOLLOWED CLOSELY BY THE TAMIL  
COMMUNITY AS WELL AS BY CIVIL LIBERAIARIANS AND OPPOSITION  
POLITICIANS.

3. TWO SEPARATE JUDGMENTS WERE HANDED DOWN, ONE SIGNED  
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BY FOUR OF THE JUDGES AND THE OTHER BY THE SINGLE TAMIL

ON THE COURT. ALTHOUGH THE TAMIL DID NOT DISSENT FROM THE MAJORITY DECISION, HE TOOK A MORE CAUTIOUS VIEW-POINT, ARGUING THAT "THERE HAS BEEN A FAILURE TO DECLARE AT STATE OF EMERGENCY (UNDER THE NEW CONSTITUTION)." HOWEVER, HE RULED THAT THE REGULATIONS WERE NEVERTHELESS VALID UNDER THE PUBLIC SECURITY ORDINANCE AND ADDED THAT ONE MUST LOOK TO THE SUBSTANCE AND THE INTENT OF THE DECLARATION OF EMERGENCY RATHER THAN MERELY THE FORM, WHICH WAS TECHNICALLY INCORRECT. THE OTHER JUSTICES CRITICIZED THE HIGH COURT FOR SLOPPY LEGAL WORK AND ARGUED THAT A STATE OF EMERGENCY WAS A WEDELY-ACCEPTED DEVICE "BY WHICH THE EXECUTIVE COULD CLOTHE HIMSELF WITH DELEGATED ELGISLATIVE POWER." CITING THE ENGLISH EMERGENCY POWERS ACT, THE MAJORITY DECISION WENT ON TO RULE THAT THE PRESENT EMERGENCY IS VALID, ADDING THAT "THE TERM 'STATE OF EMERGENCY'... MUST BE GIVEN A WIDE INTERPRETATION."

4. THE DECISION WAS A BLOW TO OPPOSITION POLITICAL PARTIES, WHO WERE CALLING FOR RELEASE OF PRISONERS HELD UNDER THE EMERGENCY AND WHO HAVE CHAFED UNDER EMERGENCY REGULATIONS WHICH HAVE ON OCCASION BEEN USED TO BAN PUBLIC MEETINGS AND TO BREAK STRIKES. THE RULING WOULD HAVE BEEN A DEFEAT FOR THE TAMILS AS WELL, SINCE ITS EFFECT WOULD HAVE BEEN TO RETURN TO THE HIGH COURT FOR RETRIAL THE CASE OF FOUR PROMINENT TAMIL POLITICAL LEADERS. HOWEVER, THE ATTORNEY-GENERAL IN A SURPRISE ANNOUNCEMENT REVEALED THAT HE WOULD NOT PURSUE THE CASE.

5. THE ATTORNEY-GENERAL'S DECISION HAS GIVEN RISE TO MUTED SPECULATION THAT SOME SORT OF POLITICAL DEAL WAS INVOLVED. THE CEYLON DAILY MIRROR, OWNED BY GOVERNMENT SUPPORTERS, TOOK THE VIEW THAT THE DECISION NOT TO PURSUE THE CASE WAS A POLITICAL GESTURE TOWARD THE TAMILS AND THE BEGINNING OF "ANOTHER NORTH-SOUTH DIALOGUE" BETWEEN THE MAJORITY SINHALESE AND THE MINORITY TAMIL COMMUNITY CENTERED IN THE NORTH. THE NEXT STEP, THE PAPER SUGGESTED, WAS THE INCORPORATION IN THE CONSTITUTION OF PROVISIONS FOR USE OF THE TAMIL LIMITED OFFICIAL USE

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LANGUAGE FOR CERTAIN OFFICIAL PURPOSES.

6. THIS NEWS REPORT DID NOT CONTAIN THE QUID PRO QUO WHICH IS FREQUENTLY DISCUSSED IN COLOMBO POLITICAL CIRCLES--A SRI LANKA FREEDOM PARTY-TAMIL UNITED LIBERATION FRONT (TULF) DEAL TO POSTPONE ELECTIIONS. UNDER THE CURRENT CONSPIRACY THEORY OF LOCAL POLITICS, THE TULF WOULD BE GRANTED ONE LONG-STANDING TAMIL DEMAND--

CONSTITUTIONAL PROVISION FOR USE OF THE TAMIL LANGUAGE--IN RETURN FOR THE SUPPORT OF ITS 11 M.P.'S FOR A CONSTITUTIONAL AMENDMENT PUTTING OFF ELECTIONS. THE TULF DENIES THAT THERE IS ANY AGREEMENT; THE PARTY'S GENERAL SECRETARY, A. AMIRTHALINGAM, ONE OF THE DEFENDENTS IN THE ORIGINAL CASE BEFORE THE HIGH COURT-AT-BAR, REITERATED SOON AFTER THE SUPREME COURT DECISION DECEMBER 10 THAT HIS PARTY WOULD NOT NEGOTIATE WITH ANY PARTY UNLESS IT ACCEPTS THE PRINCIPLES OF SELF-DETERMINATION AND NATIONHOOD FOR THE TAMILS.

7. COMMENT: AS ELECTIONS DRAW CLOSER THE RULING PARTY HAS EVERY REASON TO BE CONCILIATORY TOWARD THE TAMILS, NOT NECESSARILY FOR THE PURPOSE OF POSTPONING ELECTIONS, ALTHOUGH THAT IS STILL A GLEAM IN THE EYE OF SOME SLFP M.P.'S. IF INDEED THERE IS A DEAL IN THE WORKS, IT IS POSSIBLE THAT IT MIGHT INVOLVE AN ELECTORAL ALLIANCE, ALTHOUGH EVEN THAT WOULD BE SURPRISING BETWEEN TWO PARTIES WHICH HAVE TRADITIONALLY BEEN BITTER EEMIES. THERE IS YET ANOTHER PROMINENT TAMIL TRIAL COMING UP--THE DURAIYAPPAH ASSASSINATION CASE NOW SCHEDULED FOR JANUARY 12. THE GOVERNMENT'S DISPOSITION OF THAT SHOULD BE FURTHER EVIDENCE WHETHER OR NOT THERE IS A NEW CONCILIATORY ATTITUDE IN THE GOVERNMENT TOWARD THE TAMIL COMMUNITY.  
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